

# MINUTES

## COMMISSION ON STATE MANDATES

State Capitol, Room 126  
Sacramento, California

June 5, 2000

9:30 A.M. - PUBLIC SESSION

Present: Chairperson Annette Porini  
Representative of the Director of the Department of Finance  
Vice Chair Philip Angelides  
State Treasurer  
Member Barbara Lloyd  
Representative of the State Treasurer  
Member Heather Halsey  
Representative of the Director of the Office of Planning and Research  
Member Kathleen Connell  
State Controller  
Member Albert Beltrami  
Public Member  
Member Joann Steinmeier  
School Board Member  
Member John Lazar  
City Council Member

### CALL TO ORDER AND ROLL CALL

Chairperson Porini called the meeting to order at 9:45 a.m.

INFORMATIONAL HEARING PURSUANT TO CALIFORNIA CODE OF REGULATIONS,  
TITLE 2, CHAPTER 2.5, ARTICLE 8 (action)

### ADOPTION OF PROPOSED PARAMETERS AND GUIDELINES

#### *Special Education* – CSM 3986

Community Advisory Committees; Governance Structure; Enrollment Caseloads; Extended School Year; Resource Specialist Program (excluding maximum caseloads); Maximum Age Limit – Age 22; Interim Placements; and Written Consent.

Riverside County Superintendent of Schools, Claimant and North Region SELPA (Alameda Unified School District, Administrative Unit), Castro Valley Unified School District, Contra Costa SELPA, Grant Union High School District, Newport Mesa Unified School District, Oakland Unified School District, Palo Alto Unified School District, and San Mateo-Foster City School District, Supplemental Claimants

Education Code Sections 56026, subdivision (c)(4), 56171, subdivision (a), 56190, 56191, 56192, 56194, 56321, 56325, subdivision (b), 56346, 56362, subdivisions (c), (d), (e), and (f), and 56363.3

Statutes of 1980, Chapters 797, 1329, and 1353; Statutes of 1981, Chapters 972, 1044, and 1094; Statutes of 1982, Chapter 1201; Statutes of 1987, Chapters 311 and 1452; Statutes of 1988, Chapter 35; Statutes of 1991, Chapter 223; Statutes of 1992, Chapter 1361; Statutes of 1993, Chapter 1296; Statutes of 1994, Chapter 1288; and Statutes of 1995, Chapter 530

Title 5, California Code of Regulations, Sections 3043 and 3067, subdivision (d)

David Scribner introduced this item. He noted that this item has been before the Commission at prior hearings and that staff has not released any new documents or analyses since September 15, 1999. Today's hearing would involve the issues of offsets, uniform cost rates, and the specific language of the Parameters and Guidelines.

Parties were represented as follows: Jack Clarke, for the Riverside County Superintendent of Schools; Diana McDonough, representing the supplemental claimants and on behalf of the Educational Legal Alliance and the Education Mandated Cost Network; Carol Berg, for the Education Mandated Cost Network; Paul Goldfinger, with School Services; Anthony Murray, for the Long Beach Unified School District; Dan Stone, Attorney General, and Kathryn Gaither, for the Department of Finance; and, Marianne O'Malley and Stuart Marshall, for the Legislative Analyst's Office.

Member Connell expressed her interest to make a motion. Chairperson Porini wanted to get brief statements from the claimants and Department of Finance (DOF) before accepting any motion.

Mr. Scribner agreed with Mr. Stone that the discussion would first involve offsets, and then turn to the remaining issues.

Citing the *Hayes* case, Mr. Clarke asserted that the analysis needs to be whether there were any specific funds for the eight specific education requirements found to be mandated and not a general reference to funding for all special education programs.

Ms. McDonough distributed copies of Government Code section 17556, subdivision (e), which governs the issue of offsets. She argued that the Commission should be unwilling to find that the general special education funding provisions be interpreted to say that districts must first use general funding for excess state mandates. She noted that Education Code section 56826 requires that the funds "shall be expended exclusively for programs operated under this part." Ms. McDonough submitted that section 56826 does not require general funds to be spent first on excess state mandates and that the Legislature intended to allow maximum flexibility.

Ms. McDonough contended that the problem was that the Master Plan was underfunded. She submitted that districts could spend all of their funding on programs required by federal law and still not cover the cost of excess state mandates.

Regarding the funding statute, Ms. McDonough argued that her research shows that there were not additional revenues provided to fund additional programs, with the noted exceptions.

Mr. Goldfinger distributed copies of the initial year J-50 funding forms. He argued that the key issue was not whether there was more money appropriated for special education in 1980-81, because there was, but whether districts received that money to cover these mandates or because districts had to do more. His analysis indicated that there was increased funding available for COLA because inflation was very high that year. Mr. Goldfinger contended that

districts got more money if they included additional special education instructional units, extended year offerings, and non-public school placements. He explained that if districts ran the same level of program they only received more money because of the COLA.

Mr. Goldfinger argued that the Commission cannot only look at 1980-81, rather they must consider every year beginning in 1981-82 when support ratios were reduced, growth units were capped, and the COLA was cut. He agreed that the programs may have been funded in 1980-81, but concluded that they were not funded in subsequent years. Beginning in 1981-82, the state made changes in the law that reduced entitlements by cutting the COLA and reducing high support ratios. Any school with a high support ratio had a reduction in that support ratio. So, the state was paying, at most, 25 percent of these additional mandates. The average costs were reimbursed at 75 percent. But, if an agency spent one more dollar, they received no additional state aid—there was no marginal reimbursement.

Mr. Murray submitted that the Attorney General (AG), in its brief of March 1, 1996, argued that the state only intended to comply with federal law, not to create new mandates or move money from the federal to the state mandates. He claimed that, now that mandates have been found, the AG argues that the Legislature intended the funding to go towards the excess state mandates.

Mr. Murray agreed with staff that the AG's first analysis was correct.

Mr. Stone submitted that the excess state mandates have been fully funded. He agreed with Mr. Waters' testimony at the May 2000 hearing and Mr. Goldfinger today that encroachment is a problem, but contended that it was due to the federal program and not the state program. Mr. Stone argued that the two reports from the Legislative Analyst's Office (LAO) clearly explained why the Legislature intended the funding to first go to the excess state mandates.

Mr. Stone compared this case to the "Comparable Worth Case," a federal class action lawsuit by the CSEA. He contended that, after *Hayes*, the claimants were forced to change their argument from "total state mandate" to "partial state mandate" and that this new theory would not hold up in a hearing on the actual merits of this case. Mr. Stone did not take a position as to whether the state should increase its contribution to special education. Rather, he argued that the Commission must adopt the total offset proposition.

Member Connell noted her disagreement to the analogies used by Mr. Stone. She stated that there has been a failure on the state's part to fully fund its obligation for special education. She wanted Mr. Stone to focus on the issue of marginal versus average costs, because, she contended, if he understood that issue, his offset approach would not work.

Mr. Stone replied that the state monies must first go to the state mandates. He argued that those monies could fully fund state mandates, so it is not marginal. Member Connell asked him to respond to Mr. Goldfinger's comments about marginal reimbursement. Mr. Stone asserted that these requirements were not added at the margin and therefore did not require new funding. He submitted that they were part of the overall program for which the state has already provided funding. Member Connell asked for Riverside's response.

Ms. McDonough replied for the supplemental claimants. She stated that the statute does not provide additional funding for state mandated programs and that there is no additional funding for the additional marginal cost.

Member Connell moved to adopt Option 1A of the staff recommendation to allow the Parameters and Guidelines to include language to explain that additional revenue specifically intended to fund the cost of the state mandate shall be deducted from the costs claimed. She further urged

the Commission to adopt Option 2A of the staff recommendation to find that the use of uniform cost rates is consistent with the Commission's statutes and regulations. Member Steinmeier seconded the motion.

Member Angelides asked Mr. Stone if there was anything in the statute beyond what the claimants have noted today with respect to a specific designation of funds. Mr. Stone replied that there was not. He explained that section 56826 says the money the state provides has to be used for special education and that the claimants pointed out the four additional areas for which money had been specifically earmarked. Beyond that, he was relying on legislative history and referred to the LAO reports.

Member Angelides asked if those reports were written at the time of original enactment. Mr. Stone said they were, as well as thereafter. Member Angelides asked if the reports spoke to marginal costs over time, as program expansions occurred. Mr. Stone did not know.

Member Angelides asked for Mr. Stone's legal basis for "proportionality" regarding offsets. Mr. Stone replied that the term "reimbursement" is to provide money for costs incurred as a result of state mandates. Member Angelides noted that there were two distinct arguments here: 1) the claimants were arguing that there was no specific designation of funds so the state must reimburse districts for the eight mandates, and 2) the AG was arguing that, if the Commission looked at the totality of the funding, they would see that it exceeds the state mandates. He explained that, while the argument might be a rational way to approach a settlement, he did not see how the Commission could agree based on any specific statutory framework or case law history for proportionality. This was a reason he had urged negotiations. Mr. Stone replied that the proportional offset is the AG's estimation of the most the state should suffer if the total offset is rejected.

Member Angelides understood that the AG was offering the proportional offset as a middle ground offer, but reminded Mr. Stone that that would only work as a dispute resolution mechanism. Mr. Stone saw it more as a "fallback." He argued that the legal position for total offset is found in Government Code section 17556, subdivision (e), and that the state did provide revenue.

Regarding the phrase "In an amount sufficient to fund the cost of the state mandate," Member Angelides asked if there was a presumption that the state could fund some of the mandate or if it had to fund all of it within the statute. Mr. Stone replied that he read the statute to say that anything the state funds, whether totally sufficient or not, must be credited as an offset. He claimed to have evidence that the funding far exceeds the costs. Member Connell stated her position that there must be additional funding totally sufficient to cover a state-mandated cost because the state controls that cost; the state can eliminate that cost but the local agency cannot.

Member Angelides asked for the claimants' response to the AG's assertion that the legislative history supports Mr. Stone's argument.

Ms. McDonough replied that the LAO read the reports the Legislature got in 1980, which say that there were unknown mandated costs, then the LAO report says they presumed the Legislature knew it first was going to fund these mandated costs. But, she added that the LAO cites nothing to show that.

Mr. Murray contended that the Legislature intended Education Code section 56000 to only fund the federal mandate and that there is nothing in that legislation or in its history that supports the LAO's position.

Since Government Code section 17556, subdivision (e), was enacted in 1989, Member Halsey asked if it applied to the first nine years of this claim. Ms. McDonough explained the claimants' position that it does apply because it states existing law. She noted the previous Revenue and Taxation Code was worded similarly and that section 17556 replaced the Revenue and Taxation Code section.

Member Beltrami asked Mr. Goldfinger about the following quote from the LAO report: "Given the evidence that the Legislature and the Administration were fully aware that some procedural elements of Chapter 797 created a state-mandated local program, it is difficult to imagine the state had any higher priority use for its resources than funding its Article XIII B obligations. The Legislature's and the Administration's intention of this Constitutional obligation is evident in the bill analysis prepared by their fiscal staff." Mr. Goldfinger stated that he disagreed with the LAO's analysis and findings. He explained that they only looked at 1980 and 1981 funding and not subsequent years when the funding model was changed. He found their analysis and conclusions to be a leap of faith.

Ms. O'Malley stated for the record that the LAO is not a party to this case, but does have a broad amount of expertise in the area of legislative and fiscal history and was happy to explain their perspective on this matter. She noted that the LAO reports compared the state's obligation to special education in prior law to how much it increased funding vis-à-vis the baseline obligation of the state the year after the Master Plan for special education was passed. Ms. O'Malley submitted that the state increased funding by 90 million dollars. While there might have been some procedural elements of the Master Plan that were likely to go beyond the federal requirements and thereby impose a mandate, the 90 million dollars appeared to be more than sufficient to offset those costs. She agreed with Mr. Goldfinger that the LAO has not reviewed the sum every year, but submitted that they had looked at the increased state funding and increased it for caseload and inflation to bring it to the current day. The LAO found that the state has maintained that increased funding over time. Ms. O'Malley further contended that the state did not commit to fully funding the Master Plan—the Plan contains specific language that that funding will not be provided for more than ten percent of the general education population and that the funds may be prorated if full funds are not appropriated.

Member Beltrami asked Ms. O'Malley to respond to Mr. Murray's reading of the legislative language that the Legislature did not intend to impose a state program. Ms. O'Malley agreed that the state did not intend to have a higher educational program compared to the federal program and added that the additional mandates at issue are largely procedural.

Member Beltrami noted that Mr. Stone did not point out the source of funding and seemed to be saying that, as long as the state mandate is covered from whatever source, there is no state obligation under Article XIII B. He submitted that is not what Article XIII B says. Mr. Stone replied that his position was that there is no state obligation to fund the federal program.

Member Beltrami asked why the state funded the program when it had no obligation.

Mr. Stone replied that the state was contributing generously to the program and services. If a private source covered expenses they would not be before the Commission today—he was here today due to the claimed shortfall in state funding. Member Beltrami disagreed, and said they were there today because eight specific programs were determined to be state mandates and that, under the Constitution, they are required to be reimbursed. Mr. Stone replied that was correct only if they are underfunded.

Member Angelides reminded everyone that he had actively urged negotiations and that he was disappointed they had not been successful. He noted that the process was not at an end, even with a decision by the Commission today, because the remainder of the reimbursement process would continue. He therefore hoped that negotiations would continue because it was in the best interest of both the children and the state to provide back-funding that is fair and forward-funding that will allow for proper education of children in a context that allows the state to quantify going forward with its obligations, cost, and liabilities under this case. He did not think today should be viewed as an end. He intended to support the Controller's motion. Member Angelides noted that, at the end, he could see proportionality as the basis for a rational settlement between parties as to a fair resolution of this dispute. However, he did not see in the statute an argument for proportionality. Therefore, he was left with deciding if the statute and Constitution requires the state to provide reimbursement or if the state has already fully funded those programs. He read the statute as requiring reimbursement.

As a former legislative staff member, Member Angelides knew that what is written as intent in a legislative staff analysis cannot fully capture legislative intent because of the complexity of the institution. He added that, in the end, there is not enough money for special education. While the federal government may have defaulted in its obligations, that does not relieve the state of its primary obligation to fund education. School districts can only look to the state for this funding. It might be appropriate for the state to look to the federal government and administration, but school districts have no other remedy but the state.

Member Connell noted her hope that this matter would be settled today and her opposition to the delays. She intended to be as aggressive and promotional as possible if she got adoption of her motion today because she thought the Commission needed to move this forward. Member Connell argued that this was not a case of revenue, rather, it was an issue of principle and of legal fact. She contended that both principle and legal context here weighed for adoption of the motion she had on the floor.

Member Halsey made a substitute motion for the Commission to adopt Option 1C. Chairperson Porini seconded the motion. As a former legislative staff member, she said she was convinced by the LAO document, which was excellent, and had gone to archives to read supporting documents because she believed attorneys would do the same to show legislative intent to the courts.. Member Angelides replied that he was not discounting legislative staff analyses, rather, he had not found them definitive in light of additional conversations he had. Though the Commission had to make a decision based on the law, he urged the claimants to consider the option of a settlement based on proportionality. Member Angelides admonished the parties to do their best at settling because they both risk full position by going to court.

On a roll call vote, the substitute motion for Option 1C failed 3-4, with Members Halsey, Lazar and Porini voting "Yes" and Members Angelides, Beltrami, Connell and Steinmeier voting "No."

Member Connell divided her motion since the issue of uniform cost rates had not been discussed. She repeated her motion to adopt Option 1A.

Member Beltrami noted his intent to support the Controller's motion and expressed his disappointment that negotiations had not been successful. He hoped that negotiations would continue because it would be a better answer for the public and the children.

On a roll call vote, the motion passed 4-3, with Members Angelides, Beltrami, Connell and Steinmeier voting “Yes” and Members Halsey, Lazar and Porini voting “No.”

Member Connell then presented the second half of her motion, to adopt Option 2A. Member Steinmeier again seconded the motion.

Ms. Gaither argued that the services in special education are individual and not uniform and, therefore, the Commission should not allow for uniform cost. Federal law requires Individualized Education Programs for special education students—by definition the services are individual to each pupil and district. Ms. Gaither argued that staff’s indication that uniform cost rates should be used because actual costs would be burdensome and prohibitive did not make sense because documentation would be required for uniform cost rates as well.

[Member Angelides left and was replaced by Barbara Lloyd for the remainder of the hearing.]

Ms. Gaither noted her proposal to develop specific Parameters and Guidelines delineating actual costs based on one prior fiscal year of actual costs incurred by districts for the eight mandates as a basis for determining reimbursement for prior and future years if the Commissions chose to use uniform cost rates. She asserted that developing a number based on one district’s costs without associated actual cost data would be irresponsible and result in the gift of public funds.

Member Connell asked Riverside and staff counsel to respond to this allegation.

Mr. Clarke argued that the Commission’s regulations provide that, whenever possible, an allocation formula or uniform allowance should be used as a basis for reimbursement. He submitted that the Commission should rely on the experts that have provided declarations and use a reasonable method of determining the uniform costs. Ms. McDonough added that, for each hour a district spends looking into records for exactitude, the Legislature ultimately spends money for that time. Districts have spent a lot of time and effort making these estimates as careful and exact as possible. Mr. Clarke added that this is not a gift of public funds; professionals in education have declared under penalty of perjury that these costs are reasonable.

The Chair asked the Controller to comment on audits she does for school districts and if every audit is consistent and comes up with the same records. Member Connell replied that there is not consistency of records. She thought that, because this is a mandated situation, uniform cost was the best option. Member Connell explained that if her office had to audit every time there was a dispute, the costs would be exorbitant. Chairperson Porini appreciated that, but stated that she would feel more comfortable if there were some basis to go on.

Member Connell stated that, along with the DOF, she was supporting the idea of districts establishing a singular system of accounting at the district level because there is no reason for the discrepancy of what goes into what line account. Member Beltrami asked if it was DOF’s responsibility to lead the way in standardizing forms for districts throughout the state. The Chair replied that DOF does not put together the J-50 form, but that both parties have made a good point that forms that are understandable and easy to use need to be created.

Ms. Gaither restated DOF’s suggestion that if the Commission desired to use some sort of uniform-cost basis for going backwards in time, that a recent fiscal year be picked, and for that year an actual cost accounting be done for the adopted parameters and guidelines, and then take those costs and deflate them backwards in time. She maintained that actual costs should be used for future years because the costs are individual; some are more expensive and some are less. Member Steinmeier agreed, and asked if Ms. Gaither was proposing corroborating the number from all school districts or a sample of districts.

Ms. Gaither deferred to the Controller's Office on developing a statistically valid sample, but suggested that all of the districts should be able to look at just one year's costs to develop a uniform cost based on reality. Member Steinmeier asked the Controller how many districts would need to be included. Member Connell did not have her Chief of the Audit Division with her and therefore withheld comment. She added that another issue was which year to pick to determine the accuracy of these numbers.

Dr. Berg noted that there was an erroneous assumption being made that the current Parameters and Guidelines are not based on actual numbers. She submitted that districts have been developing unit cost rates for about 20 years now, with support of the Controller's Office, and they are based on the same methodology described by Ms. Gaither.

On a roll call vote, Member Connell's motion to adopt Option 2A was adopted 5-2, with Members Connell, Halsey, Lazar, Steinmeier, and Lloyd voting "Yes" and Members Beltrami and Porini voting "No."

Ms. Higashi noted that the next issue for Commission decision is which version to adopt as proposed or modified, in whole or in part; or whether or not the Commission wished to make any other motions directing staff, or inviting any other suggestions from the parties.

Member Connell urged staff to follow the options included under page four of their recommendation. She asked if there was any specific language she needed to include in her motion to give staff direction. Mr. Scribner noted that, to be consistent with the previously adopted motions, she would move adoption of Exhibit A, staff's Proposed Parameters and Guidelines, which include uniform cost rates as presented by the claimants. Member Connell made that her motion and was seconded by Member Steinmeier.

Member Beltrami wanted to consider Ms. Gaither's suggestion to set a point in time. The Chair agreed that she was not comfortable going forward without a little more information. She thought the current Parameters and Guidelines seemed too open-ended for districts.

Ms. McDonough requested a recess. [A recess was taken from 11:18 a.m. to 11:31 a.m.]

Upon reconvening, Chairperson Porini read a resolution for Member Gomes, who had represented the Office of Planning and Research for the previous year and a half. Member Gomes had been appointed by Governor Davis as Chief of the Mentally Ill Offenders Services Program in the Department of Corrections.

Member Connell asked for the claimants' response to her motion. Mr. Clarke supported the motion. He thought it was important for the Commission to move forward today and that the motion was appropriate based on the facts set forth in the declarations. He clarified that the proposed uniform cost rates were under declaration by experts in the field and were the result of an analysis of records. The Riverside claimant was one of the few that had substantial documentation for the vast majority of the special education requirements.

Ms. Gaither argued that, for example, in the case of special education for 22 year olds, there was an assumption that those costs are the same for every student statewide when it is clear that is not the case. She submitted that the DOF would rather pay more for some students if it were an actual cost than to pay an average amount and overpay in some cases. She therefore urged the Commission to look at one fiscal year of costs to determine the uniform cost rate as opposed to using unaudited costs of one school district. Mr. Clarke responded that those figures were based on average costs and that, as with any uniform costs, some actual costs will be higher and some lower. He submitted that there was proper factual basis for the Commission to implement



uniform costs in this situation and that the motion should be upheld.

Ms. McDonough added that numerous other declarations were submitted. Mr. Clarke noted that these estimates were discussed among the declarants as well as among the state SELPA directors at the statewide meeting of SELPA directors in November and December of 1998 and March of 1999.

Mr. Clarke confirmed for Member Beltrami that the three chosen SELPAs were Riverside, Calaveras, and Contra Costa. Member Beltrami asked if there could be a variation from some of the other counties' SELPA, such as those in the north. Mr. Clarke replied that, as with any uniform cost, there could be variation. He submitted that the issue before the Commission was whether the data provided was of sufficient reliability and reasonableness so the Commission could make a decision. He explained that Riverside's SELPA contained 20 districts.

Mr. Scribner noted that following changes to Staff's Proposed Parameters and Guidelines, Exhibit A:

- On page three, the first two sentences of the paragraph at the top of the page beginning "Actual costs" and "Estimated costs" will be stricken because they are inconsistent with uniform cost rates.
- The remaining sentences beginning "Pursuant to" and "If the total costs" will be combined and moved to page 14, after the first paragraph under "Claim Preparation." This is consistent with boilerplate language in other Parameters and Guidelines.

On a roll call vote, the motion carried 5-2, with Members Lazar, Steinmeier, Lloyd, Beltrami, and Connell voting "Yes" and Members Halsey and Porini voting "No."

Member Connell noted that this was a threshold day for the Commission and thanked her colleagues for their deliberation. She hoped to release the Claiming Instructions within 60 days and that the claims would come in within 120 days, as required. She urged the claimants to ensure all districts are prepared to move quickly.

## **ADJOURNMENT**

Hearing no further business, Chairperson Porini adjourned the meeting at 11:47 a.m.

PAULA HIGASHI  
Executive Director

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